

Senate Engrossed House Bill

**FILED**

**JANICE K. BREWER  
SECRETARY OF STATE**

State of Arizona  
House of Representatives  
Forty-seventh Legislature  
Second Regular Session  
2006

CHAPTER 260

## **HOUSE BILL 2785**

AN ACT

AMENDING TITLE 44, CHAPTER 9, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 20;  
RELATING TO TELEPHONE RECORDS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 44, chapter 9, Arizona Revised Statutes, is amended  
3 by adding article 20, to read:

4 ARTICLE 20. TELEPHONE RECORDS

5 44-1376. Definitions

6 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

7 1. "PROCURE" MEANS TO OBTAIN BY ANY MEANS, INCLUDING ELECTRONICALLY,  
8 IN WRITING OR IN ORAL FORM, WITH OR WITHOUT CONSIDERATION.

9 2. "TELEPHONE" MEANS ANY DEVICE THAT IS USED BY A PERSON FOR VOICE  
10 COMMUNICATIONS IN CONNECTION WITH THE SERVICES OF A TELEPHONE COMPANY WHETHER  
11 THE VOICE COMMUNICATIONS ARE TRANSMITTED IN ANALOG, DATA OR ANY OTHER FORM.

12 3. "TELEPHONE COMPANY" MEANS ANY PERSON THAT PROVIDES COMMERCIAL  
13 TELEPHONE SERVICES TO A CUSTOMER, IRRESPECTIVE OF THE COMMUNICATIONS  
14 TECHNOLOGY THAT IS USED TO PROVIDE THE SERVICE, INCLUDING:

15 (a) TRADITIONAL WIRE LINE OR CABLE TELEPHONE SERVICE.

16 (b) CELLULAR, BROADBAND PERSONAL COMMUNICATION SYSTEMS OR OTHER  
17 WIRELESS TELEPHONE SERVICE.

18 (c) MICROWAVE, SATELLITE OR OTHER TERRESTRIAL TELEPHONE SERVICE.

19 (d) VOICE OVER INTERNET TELEPHONE SERVICE.

20 4. "TELEPHONE RECORD" MEANS INFORMATION THAT IS RETAINED BY A  
21 TELEPHONE COMPANY AND THAT RELATES TO THE TELEPHONE NUMBER DIALED BY THE  
22 CUSTOMER OR THE INCOMING NUMBER OF THE CALL DIRECTED TO A CUSTOMER OR OTHER  
23 DATA RELATED TO SUCH CALLS TYPICALLY CONTAINED ON A CUSTOMER TELEPHONE BILL  
24 INCLUDING THE TIME THE CALL STARTED AND ENDED, THE DURATION OF THE CALL, THE  
25 TIME OF DAY THE CALL WAS MADE, ANY CHARGES APPLIED AND ANY INFORMATION THAT  
26 INDICATES THE LOCATION FROM WHICH OR TO WHICH THE CALL WAS MADE. TELEPHONE  
27 RECORD DOES NOT INCLUDE ANY INFORMATION COLLECTED AND RETAINED BY OR ON  
28 BEHALF OF CUSTOMERS USING CALLER IDENTIFICATION OR SIMILAR TECHNOLOGY.

29 44-1376.01. Unauthorized or fraudulent procurement, sale or  
30 receipt prohibited; procedures to protect against  
31 disclosure

32 A. A PERSON SHALL NOT DO ANY OF THE FOLLOWING:

33 1. KNOWINGLY PROCURE, ATTEMPT TO PROCURE, SOLICIT OR CONSPIRE WITH  
34 ANOTHER TO PROCURE A TELEPHONE RECORD OF ANY RESIDENT OF THIS STATE WITHOUT  
35 THE AUTHORIZATION OF THE CUSTOMER TO WHOM THE RECORD PERTAINS OR BY  
36 FRAUDULENT, DECEPTIVE OR FALSE MEANS.

37 2. KNOWINGLY SELL OR ATTEMPT TO SELL A TELEPHONE RECORD OF ANY  
38 RESIDENT OF THIS STATE WITHOUT THE AUTHORIZATION OF THE CUSTOMER TO WHOM THE  
39 RECORD PERTAINS.

40 3. RECEIVE A TELEPHONE RECORD OF ANY RESIDENT OF THIS STATE KNOWING  
41 THAT THE RECORD HAS BEEN OBTAINED WITHOUT THE AUTHORIZATION OF THE CUSTOMER  
42 TO WHOM THE RECORD PERTAINS OR BY FRAUDULENT, DECEPTIVE OR FALSE MEANS.

43 B. TELEPHONE COMPANIES THAT MAINTAIN TELEPHONE RECORDS OF A RESIDENT  
44 OF THIS STATE SHALL ESTABLISH REASONABLE PROCEDURES TO PROTECT AGAINST  
45 UNAUTHORIZED OR FRAUDULENT DISCLOSURE OF SUCH RECORDS THAT COULD RESULT IN A

1 SUBSTANTIAL HARM OR INCONVENIENCE TO ANY CUSTOMER. NO PRIVATE RIGHT OF  
2 ACTION IS AUTHORIZED UNDER THIS SUBSECTION. FOR THE PURPOSES OF THIS  
3 SUBSECTION, A TELEPHONE COMPANY'S PROCEDURES ARE REASONABLE IF THE TELEPHONE  
4 COMPANY COMPLIES WITH THE PROVISIONS GOVERNING CUSTOMER PROPRIETARY NETWORK  
5 INFORMATION IN SECTION 222 OF THE COMMUNICATIONS ACT OF 1934 (47 UNITED  
6 STATES CODE SECTION 222), AS AMENDED, AND REGULATIONS PROMULGATED UNDER THAT  
7 SECTION.

8 44-1376.02. Application

9 A. THIS ARTICLE DOES NOT PREVENT ANY ACTION BY A LAW ENFORCEMENT  
10 AGENCY OR ANY OFFICER, EMPLOYEE OR AGENT OF A LAW ENFORCEMENT AGENCY TO  
11 OBTAIN TELEPHONE RECORDS IN CONNECTION WITH THE PERFORMANCE OF THE OFFICIAL  
12 DUTIES OF THE AGENCY.

13 B. THIS ARTICLE DOES NOT PROHIBIT A TELEPHONE COMPANY FROM OBTAINING,  
14 USING, DISCLOSING OR PERMITTING ACCESS TO ANY TELEPHONE RECORD, EITHER  
15 DIRECTLY OR INDIRECTLY THROUGH ITS AGENTS:

16 1. AS OTHERWISE AUTHORIZED BY LAW.

17 2. WITH THE LAWFUL CONSENT OF THE CUSTOMER OR SUBSCRIBER.

18 3. AS MAY BE NECESSARILY INCIDENT TO THE RENDITION OF THE SERVICE OR  
19 TO THE PROTECTION OF THE RIGHTS OR PROPERTY OF THE PROVIDER OF THAT SERVICE  
20 OR TO PROTECT USERS OF THOSE SERVICES AND OTHER CARRIERS FROM FRAUDULENT,  
21 ABUSIVE OR UNLAWFUL USE OF OR SUBSCRIPTION TO THOSE SERVICES.

22 4. TO A GOVERNMENTAL ENTITY, IF THE TELEPHONE COMPANY REASONABLY  
23 BELIEVES THAT AN EMERGENCY INVOLVING IMMEDIATE DANGER OF DEATH OR SERIOUS  
24 PHYSICAL INJURY TO ANY PERSON JUSTIFIES DISCLOSURE OF THE INFORMATION.

25 5. TO THE NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN IN  
26 CONNECTION WITH A REPORT SUBMITTED UNDER THE VICTIMS OF CHILD ABUSE ACT OF  
27 1990 (42 UNITED STATES CODE SECTION 13032).

28 C. THIS ARTICLE DOES NOT APPLY TO OR EXPAND ON THE OBLIGATIONS AND  
29 DUTIES OF ANY TELEPHONE COMPANY OR ITS AGENTS, EMPLOYEES OR CONTRACTORS TO  
30 PROTECT TELEPHONE RECORDS BEYOND THOSE OTHERWISE ESTABLISHED BY FEDERAL AND  
31 STATE LAW, INCLUDING THE PROVISIONS GOVERNING CUSTOMER PROPRIETARY NETWORK  
32 INFORMATION IN SECTION 222 OF THE COMMUNICATIONS ACT OF 1934 (47 UNITED  
33 STATES CODE SECTION 222), AS AMENDED, AND REGULATIONS PROMULGATED UNDER THAT  
34 SECTION.

35 D. THIS ARTICLE DOES NOT APPLY TO A TELEPHONE COMPANY OR ITS AGENTS OR  
36 REPRESENTATIVES WHO REASONABLY AND IN GOOD FAITH ACT PURSUANT TO THIS  
37 ARTICLE, NOTWITHSTANDING ANY LATER DETERMINATION THAT THE ACTION WAS NOT  
38 AUTHORIZED.

39 44-1376.03. Unfair or deceptive trade practices

40 ANY VIOLATION OF THIS ARTICLE IS AN UNLAWFUL ACT OR PRACTICE PURSUANT  
41 TO SECTION 44-1522. THE ATTORNEY GENERAL MAY INVESTIGATE THE ACT OR PRACTICE  
42 AND TAKE APPROPRIATE ACTION PURSUANT TO CHAPTER 10, ARTICLE 7 OF THIS TITLE.

43 44-1376.04. Civil causes of action

1           A. IN A CIVIL ACTION, A CUSTOMER WHOSE TELEPHONE RECORDS WERE  
2 PROCURED, SOLD OR RECEIVED IN VIOLATION OF THIS ARTICLE MAY RECOVER FROM THE  
3 PERSON THAT COMMITTED THE VIOLATION THE FOLLOWING RELIEF:

4           1. PRELIMINARY AND OTHER EQUITABLE OR DECLARATORY RELIEF AS MAY BE  
5 APPROPRIATE.

6           2. DAMAGES EQUAL TO THE SUM OF THE ACTUAL DAMAGES SUFFERED BY THE  
7 PLAINTIFF AND ANY PROFITS MADE BY THE VIOLATOR AS A RESULT OF THE VIOLATION  
8 BUT IN NO CASE SHALL A PERSON ENTITLED TO RECOVER RECEIVE LESS THAN ONE  
9 THOUSAND DOLLARS.

10          3. REASONABLE ATTORNEY FEES AND OTHER LITIGATION COSTS THAT ARE  
11 REASONABLY INCURRED.

12          B. A CIVIL ACTION UNDER THIS SECTION MAY NOT BE COMMENCED MORE THAN  
13 TWO YEARS AFTER THE DATE ON WHICH THE CLAIMANT FIRST DISCOVERED OR HAD A  
14 REASONABLE OPPORTUNITY TO DISCOVER THE VIOLATION.

15          44-1376.05. Violation; classification

16          A PERSON WHO VIOLATES THIS ARTICLE IS GUILTY OF A CLASS 1 MISDEMEANOR  
17 AND IS SUBJECT TO FORFEITURE OF ANY PERSONAL PROPERTY USED OR INTENDED TO BE  
18 USED TO COMMIT THE OFFENSE.

**APPROVED BY THE GOVERNOR MAY 8, 2006.**

**FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 8, 2006.**